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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,650	07/07/2003	Yong Hua Zhu	LOMAU.122C1	7638
20995 7590 03/17/2010 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
03/17/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
efiling@kmob.com
2ros@kmob.com

Office Action Summary

Application No.

10/614,650

Applicant(s)

ZHU ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6, 8-15, 17-22 and 24-41 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 6, 8, 9, 11-15, 17-20 and 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 21, 22, 24, 34-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2010 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 10, 21, 22, 24 and 34-41 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

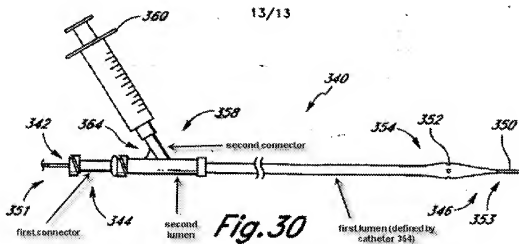
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10, 21, 22, 24 and 34-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhu et al (CA 2,274,066 A).

With respect to **claim 21**: Zhu discloses a device for at least partially closing an opening in

tissue, comprising: an elongate body in the form of dual lumen catheter 340 comprising a first lumen defined by catheter 354 having a first distal opening and a second lumen 358 having a second distal opening, a first connector adapted to provide access to the first lumen 340 (Fig. 30); a second connector adapted to provide access to the second lumen 358, e.g. for attachment of syringe 360(Fig. 30); and a wound cover member in the form of a wound closure device releasably connected to the elongate body 340 at the first distal opening via its position on the guidewire 350 releasably attached to said elongate body 340; and wherein the wound cover member and the elongate body are configured so that when the wound cover member is released from the first distal opening of the elongate body at or adjacent an opening in tissue, the wound cover member is wholly disconnected from the device. (Page 18, line 15-Page 19, line 19) As can be seen in annotated Fig. 30 of Zhu below, the lumens are arranged so that a longitudinal space is defined between the first and second distal openings; wherein the device is configured so that, during advancement towards an opening in tissue and during operation the first distal opening is permanently maintained at a position distal of the second distal opening, and the first and second lumens do not communicate with one another.



Examiner-annotated Fig. 30 of Zhu

With respect to **claim 10**: The elongate body 340 has a first portion comprising the first lumen and a second portion comprising the second lumen 358, and the first and second portions are rigidly connected to one another so as to always move as a single elongate unit.

With respect to **claim 22**: The second lumen 358 disclosed by Zhu is configured to communicate a flowing fluid, negatively pressured air, therethrough from syringe 360. (Page 19, lines 1,2)

With respect to **claim 24**: The device disclosed by Zhu additionally comprises a release rod, guidewire 350, sized and configured to slide through the first lumen and into contact with the wound cover member. (Page 19, lines 12-16)

With respect to **claim 34**: The device disclosed by Zhu additionally comprises a release rod, guidewire 350, wherein the first lumen is adapted to slidably receive the release rod 350 therein. (Fig. 30, Page 18, lines 34,35)

With respect to **claim 35**: The wound cover member has a maximum diameter that is greater than a diameter of the second lumen distal opening

With respect to **claim 36**: The first connector disclosed by Zhu is considered herein to be adapted to connect to a source of vacuum so as to draw a vacuum through the first lumen inasmuch as Zhu discloses application of suction to the dual lumen catheter, i.e. either through second lumen 358 or first lumen.

With respect to **claim 38**: The second connector is adapted to selectively connect to a source of vacuum, syringe 360, so as to draw a vacuum through the second lumen. (Page 19, lines 1,2)

With respect to **claim 39**: The second connector is adapted to selectively connect to a source of irrigation fluid inasmuch as the syringe (or another syringe) is also fully capable of containing irrigation fluid.

With respect to **claim 40**: It is the examiner's position that the second connector is adapted to selectively connect to a source of flowable adhesive so that flowable adhesive may flow through the second lumen and out the second distal opening inasmuch as the syringe 360 is fully capable of housing a flowable adhesive and the connector is capable of connecting to any syringe that is also fully capable of housing a flowable adhesive.

With respect to **claim 41**: The second connector defines a second connector lumen and, as can be seen in the annotated version of Fig. 30 *supra*, an axis of the second connector lumen is

disposed in a direction generally transverse to an axis of the second lumen. (Fig. 30)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
7. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zhu et al ('066).

With respect to **claim 37**: Zhu discloses that the wound closure member is held onto the first lumen distal opening by its attachment to the guidewire 350 therein. Zhu also discloses application of vacuum to either lumen of the elongate body 340 and discloses removal of the guidewire prior to closure of the wound. Therefore, though Zhu does not explicitly disclose that the wound cover member is held onto the first lumen by the vacuum, the wound cover member could be held on by the vacuum after the guidewire is removed as an alternate means of holding the wound cover member in place prior to deployment. Thus it is the examiner's position

that it would be obvious to one of ordinary skill in the art to modify the device of Zhu such that, after the guidewire is removed and prior to deployment of the wound cover member, vacuum is applied through the first lumen such that the wound cover member is held in place by said vacuum with a reasonable expectation of success to ensure the wound cover member remains attached to the elongate body until deployment is desired.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761

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